IN THE SUPREME COURT OF IOWA

No. 16-1974

BEVERLY GARDINER NANCE

Petitioner-Appellant,

v.

IOWA DEPARTMENT OF REVENUE,

Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE MICHAEL D. HUPPERT, JUDGE

APPLICATION FOR FURTHER REVIEW
OF IOWA COURT OF APPEALS
DECISION FILED SEPTEMBER 13, 2017

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QUESTION PRESENTED FOR REVIEW

Whether the settlement proceeds paid out to the grandchildren of Lester Gardiner, Sr. ("Decedent") pursuant to a court-approved family settlement agreement entered into between Decedent's grandchildren and his daughter-in-law, Beverly Gardiner Nance ("Taxpayer"), are exempt from inheritance tax under Iowa Code section 450.9.

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STATEMENT SUPPORTING FURTHER REVIEW

The Iowa Department of Revenue ("Department") applies for further review of the decision of the Iowa Court of Appeals in *Beverly Gardiner Nance v. Iowa Department of Revenue*, No. 16-1974, 2017 WL 4049523 (Iowa Ct. App. Sept. 13, 2017).

This Court should grant the Department's Application because the Court of Appeals decision is in conflict with Iowa Supreme Court precedent. *See* Iowa R. App. P. 6.1103(1)(b)(1). In particular, the opinion is inconsistent with *In re Estate of Bliven*, 236 N.W.2d 371 (Iowa 1975), *Seeley v. Seeley*, 45 N.W.2d 881 (Iowa 1951), and *In re Wells' Estate*, 120 N.W. 713 (Iowa 1909) insofar as it holds that the post-mortem family settlement agreement entered into between Taxpayer and Decedent's grandchildren determines how property passed from Decedent upon his death for purposes of determining Iowa inheritance tax under Iowa Code chapter 450. *See Gardiner Nance*, 2017 WL 4049523, at *3–5.

Additionally, although the Court of Appeals decision purports to rely upon and apply this Court's holding in *In re Estate of Van Duzer*, 369 N.W.2d 407 (Iowa 1985), the decision is actually inconsistent

with the *Estate of Van Duzer* holding. Specifically, *Estate of Van Duzer* did not hold that the settlement agreement in that case determined how property passed from the decedent. It certainly did not analyze the merits of the surviving spouse's underlying claim against the estate and the trust or whether the settlement agreement compromising such claim was entered into in good faith.

Finally, the Court of Appeals decision sets forth a new standard for deciding when a family settlement agreement affects a taxpayer's inheritance tax liability. *See* Iowa R. App. P. 6.1103(1)(b)(3)–(4). This new framework is not only in conflict with existing precedent, but also presents an unworkable standard that will considerably challenge the uniform application of Iowa's inheritance tax laws and will strain agency and judicial resources.

The Department asks that this Court grant further review and reverse the decision of the Court of Appeals, thereby upholding the district court ruling which affirmed the Director's Final Order in its entirety.

STATEMENT OF THE CASE

This is a judicial review of a final agency action by the Department whereby the Director of Revenue ("Director") affirmed the administrative law judge's ("ALJ") conclusion that Taxpayer did not meet her burden of proving that the Department's denial of her inheritance tax refund claim was erroneous. The agency decision was based on the following two conclusions. First, the Director affirmed the ALJ's determination that the family settlement agreement was not a taxable event for inheritance tax purposes. (App. 91–92). Second, the Director upheld the ALJ's conclusion that Taxpayer did not prove by clear, convincing, and satisfactory evidence that Decedent lacked sufficient mental capacity to execute the beneficiary designation form. (App. 92–93). Taxpayer filed a petition for judicial review in the Iowa District Court for Polk County challenging the Director's Final Order. The district court affirmed the final agency decision in its entirety. (App. 96–108).

Taxpayer appealed the district court's ruling to this Court, which transferred the case to the Iowa Court of Appeals. In her appeal, Taxpayer only challenged the district court's determination

that the family settlement agreement was not a taxable event for inheritance tax purposes because it did not change how Decedent's brokerage accounts passed upon his death. *See Gardiner Nance*, 2017 WL 4049523, at *2 n.5. On May 23, 2017, the Court of Appeals ordered the appeal submitted without oral argument. In a unanimous opinion, the Court of Appeals reversed the district court and concluded that this case was controlled by *Estate of Van Duzer* and that the family settlement agreement changed how one half of Decedent's brokerage accounts passed upon his death. *See Gardiner Nance*, 2017 WL 4049523, at *3,5. Thus, the Court of Appeals determined that the settlement proceeds paid to Decedent's grandchildren under the family settlement agreement were exempt from inheritance tax under section 450.9. *See id.*, at *4–5.

STATEMENT OF THE FACTS

On August 17, 2003, Decedent and his wife executed a beneficiary designation form listing their only son, Lester Gardiner, Jr., as the sole primary beneficiary of their brokerage accounts and Taxpayer, who was married to their son, as the sole contingent beneficiary. (App. 24). Decedent survived his wife and son and died

testate on January 31, 2009. (App. 5). On October 20, 2009, his estate timely filed an inheritance tax return, and paid the required tax of $18,988.00, which was calculated based on the fact that Taxpayer received the full balance of the brokerage accounts as she was the only beneficiary designated on the beneficiary form who survived Decedent. (App. 1 ¶¶ 1–2).

On May 28, 2009, Decedent's grandchildren, who were the beneficiaries of his will, filed a lawsuit against Taxpayer challenging the validity of the beneficiary designation form. (App. 55–62). The central allegation of this lawsuit was that Decedent did not have the requisite capacity to execute the form in August of 2003 due to his dementia. (App. 57 ¶¶ 8, 10–11). Taxpayer resisted these allegations, claiming that Decedent was in fact competent when he and his wife signed the beneficiary form nearly four and a half years prior to his death. (App. 50). There was no judicial determination of the competence issue, however, because on July 27, 2010 Decedent's grandchildren and Taxpayer entered into a family settlement agreement, whereby the brokerage accounts were to be liquidated and the proceeds divided in two equal shares between the grandchildren

and Taxpayer. (App. 69–70). On September 3, 2010, the Dallas County District Court approved this family settlement agreement. (App. 109–11).

On October 28, 2010, Decedent's estate filed an amended inheritance tax return requesting a refund of $10,034.00 in recognition of the provision in the family settlement agreement requiring that one half of the brokerage accounts be paid to Decedent's grandchildren. (App. 2 ¶ 8). Specifically, the estate claimed that those proceeds passing by operation of the settlement agreement to Decedent's grandchildren were exempt from inheritance tax under section 450.9 as property passing to Decedent's lineal descendants. (App. 2 ¶ 8). On November 3, 2010, the Department denied the refund claim. (App. 2 ¶ 9). Decedent's estate timely protested this denial on December 29, 2010. (App. 1–2).

Although the question of Decedent's competence was decided in the agency and affirmed by the district court, Taxpayer did not appeal that determination to this Court. It is, however, pertinent to review some of the relevant facts on this issue because the Court of Appeals opinion assumes facts not in the record and ignores the fact that the

issue of Decedent's competence was resolved in the agency in favor of the Department. During the agency proceeding, Taxpayer argued that Decedent was incompetent, relying on a one-page letter authored by Dr. Robert L. Bender, in which he concludes that Decedent was incompetent to execute the beneficiary form in August of 2003 because he suffered from dementia. (App. 63–64). The contested case record, however, contains evidence that contradicts Dr. Bender's conclusion. For example, James R. Gibbons, a broker for Edward D. Jones, testified at a deposition taken in the probate action that "he was present when the [beneficiary] change was made and believed both . . . [Decedent] and . . . [his wife] to be mentally alert." (App. 66). There is also evidence that Decedent was executing legal documents years after signing the beneficiary designation form. *See* Ex. I at 4 (attached hereto) (declining to serve as the executor of his late wife's estate on October 21, 2004); Ex. I at 5 (attached hereto) (deciding to take under his late wife's will rather than claim his spousal elective share on May 11, 2005).

Tellingly, it was not until August 3, 2007 when Taxpayer and Dianne Lynae Green (one of Decedent's grandchildren named in his

will) filed an involuntary petition seeking the appointment of a guardian and a conservator for Decedent. *See* Ex. J at 5–6 (attached hereto). At the time of filing of this involuntary petition, one of Decedent's treating physicians (Dr. K.J. Klise) opined in a signed statement that Decedent's "mental condition makes him incapable of caring for his own personal safety or provide for the necessities of his life such as food, shelter, clothing and continuing medical care." *See id.* at 7 (attached hereto). On September 11, 2007, Decedent was declared unfit to manage his affairs and Taxpayer and Dianne Lynae Green were appointed as his co-guardians and co-conservators. *See id.* at 3 (attached hereto). During the agency proceeding, Taxpayer adduced no evidence of fraud, coercion, undue influence, or other impropriety suggesting that Decedent did not execute the beneficiary form in August of 2003 of his own volition. (App. 46). In fact, Taxpayer unequivocally denied knowledge of any such impropriety. (App. 46).

Lastly, there has been no finding either by the Department or the district court regarding Taxpayer's motives in executing the family settlement agreement. (App. 83–108). The Department's

position has always been that Taxpayer's motives are "immaterial to determining whether . . . Decedent's [brokerage] [a]ccounts passed to his grandchildren upon his death or by operation of the [family settlement] [a]greement." (App. 76).

ARGUMENT

THE IOWA COURT OF APPEALS ERRED IN CONCLUDING THAT THE SETTLEMENT PROCEEDS PAID TO DECEDENT'S GRANDCHILDREN WERE EXEMPT FROM INHERITANCE TAX.

A. *Estate Of Bliven*, Not *Estate Of Van Duzer*, Controls The Outcome Of This Case.

In concluding that this case is governed by *Estate of Van Duzer*, the Court of Appeals wrongly focused on the fact that the settlement proceeds were paid to Decedent's estate and from there distributed to his grandchildren. *See Gardiner Nance*, 2017 WL 4049523, at *4 ("The agreement provided that the funds in the Edward D. Jones accounts were to be liquidated to cash. Secondly, one half of the funds in the accounts were to be distributed to the estate; and thirdly, the estate would then pay the sum it received to the devisees."). In fact, this is in contrast to *Estate of Van Duzer*, where the surviving spouse did not actually receive her settlement proceeds through the

decedent's estate, but, rather, directly from the trustee. *See* 369 N.W.2d at 410 ("It doubtless would have made a better record if separate checks were issued for this purpose, a deposit to the estate account had been documented and a court order had been obtained authorizing the payment of a distributive share in the sum agreed to in the settlement."). In reality, for Iowa inheritance tax purposes, it is irrelevant how settlement proceeds are distributed as a means for implementing a family settlement agreement.

Indeed, the controlling factor is not whether the claimant received his or her share of the property at issue through the decedent's estate, but, rather, how the claimant became entitled to such property. The charities in *Estate of Bliven* had no right to any property in the decedent's estate but for the settlement agreement. *See* 236 N.W.2d at 371 ("[P]roperty rights acquired by the two charities passed to them only by assignment from decedent's heirs, separate and apart from her death."). Here, Decedent's grandchildren similarly had no right to his brokerage accounts but for the family settlement agreement. This family settlement agreement, however, did not change the fact that title to the brokerage accounts

passed to Taxpayer from Decedent upon his death. This Court found as much in *Seeley* stating as follows:

> The contracting parties do not determine to whom the title passes *from decedent*.
>
> In legal effect the contracting parties convey title *from themselves*. . . . The probate court shapes the administration so as to carry out the contract but by no theory or fiction of law does title bypass the heirs or beneficiaries and pass direct from decedent to those designated by the contract. It is instead accurate to say the probate court implements the contract instead of such implementing being done by formal conveyance.

45 N.W.2d at 884–85. The analysis in *Seeley* is merely a restatement of this Court's conclusion expressed some forty years prior in *Wells' Estate*, where the Court stated:

> Upon being admitted to probate, the will spoke as of the time of testator's death and determined those then titled to estate. Having acquired, or in anticipation of acquiring, the property, they could buy their peace, as contended, but in doing so paid or authorized to be paid their own money. While this was done through the administrators, it was by virtue of the direction of the heirs, and not because of any obligation arising in the administration of the estate. In short, it was their money, acquired under the will, and, in so far as the collection of the inheritance tax is concerned, it was immaterial whether they paid it out in compromise of a contest or other purpose.

120 N.W. at 715. Accordingly, although the family settlement agreement gave Decedent's grandchildren the right to receive one half of his brokerage accounts, this agreement did not alter the fact that upon Decedent's death the entire balance of the brokerage accounts passed to Taxpayer. Thus, the grandchildren received their one-half share not from Decedent upon his death but from Taxpayer upon executing the family settlement agreement. The probate court in this case merely administered the estate in accordance with the provisions of the family settlement agreement. Therefore, the Court of Appeals erred in concluding that the settlement proceeds paid to the grandchildren were exempt from inheritance tax under section 450.9 as property passing directly from Decedent to his lineal descendants.

Indeed, under Iowa law, only property passing from a decedent is subject to inheritance tax. *See* Iowa Code § 450.2 (2009). Here, upon Decedent's passing, title to his brokerage accounts passed instantaneously from him to Taxpayer pursuant to the beneficiary designation contract between Decedent and Edward D. Jones. *See id.* §§ 633D.9; 633D.11 (2009). Thus, the brokerage accounts were subject to inheritance tax, unless one of the exemptions in Iowa Code

chapter 450 applied. *See id.* § 450.3(3) (2009). While true that as his lineal descendants Decedent's grandchildren are exempt from inheritance tax, the exemption applies only for property they received directly from Decedent upon his passing.

Decedent's grandchildren challenged the validity of the beneficiary designation form, but ultimately compromised their claim that Decedent was incompetent by entering into the family settlement agreement. Thus, there was no judicial determination that Decedent lacked the legal capacity to execute the beneficiary form. (App. 98 (the district court noting that the probate court order approving the family settlement agreement made no "further comment on the competency issue")). Indeed, this form remains valid today. Had there been a judicial determination that Decedent was incompetent, the form would have been invalidated and title to the brokerage accounts would not have passed to Taxpayer upon Decedent's death. Rather, the entire balance in the brokerage accounts would have passed directly to Decedent's grandchildren under his will. That never occurred, however, as the family settlement agreement split the brokerage accounts between the two family groups.

Unlike Decedent's grandchildren, the claimant in *Estate of Van Duzer* was the decedent's surviving spouse who had a statutory right to an elective share in her decedent's estate. *See id.* § 633.236 (1977). This right existed independently of the settlement agreement. As the district court in this case observed, "the surviving spouse in *Van Duzer* had an enforceable claim against the estate at the time of the decedent's death independent of the settlement agreement." (App. 105). Once the surviving spouse exercised her statutory right to an elective share, the only remaining question was the amount of such share. *See Estate of Van Duzer*, 369 N.W.2d at 410 (stating that the gravamen of the surviving spouse's claim against the estate was the amount of her statutory share). Thus, this Court's conclusion in *Estate of Van Duzer* recognized that the settlement agreement only served to enlarge the surviving spouse's statutory share under section 633.238. *See id.* (explaining that the settlement proceeds of $106,500.00 were paid to the surviving spouse in satisfaction of her statutory share in the decedent's estate). In other words, the Court concluded that the surviving spouse did not take the amount at issue by settlement of her claim against the estate and the trust, but by

reason of her election to take against her deceased husband's will, and the settlement agreement only served to enlarge her statutory share. *See id.*

In contrast to a settlement agreement, a spousal election to take against the decedent's will transfers title over such distributive share directly from the decedent to the surviving spouse. *See In re Estate of Spurgeon*, 572 N.W.2d 595, 598 (Iowa 1998) ("[A] choice to take against the will is a genuine election which nullifies gifts to the surviving spouse in the will but leaves the will to be carried out as to the other devisees as nearly as may be done."). In effect, a spousal election to take against the will would invalidate any provisions in the will devising property to the surviving spouse, who takes his or her statutory share directly from the decedent. *See Watrous v. Watrous*, 163 N.W. 439, 443 (Iowa 1917) ("If the survivor elects not to consent to the provisions of the will, the effect of such election is to render any provision made by the will, for the benefit of such survivor, inoperative, and the survivor will take the distributive share provided by law.").

Therefore, the Court of Appeals erred by not focusing on the origin of the grandchildren's right to receive one half of Decedent's brokerage accounts. A surviving spouse receives his or her statutory elective share directly from the decedent at the time of death. In contrast, the grandchildren received their one-half share of Decedent's brokerage accounts pursuant to the family settlement agreement. Although the settlement proceeds were distributed to the grandchildren through Decedent's estate, such proceeds were not "somehow . . . mystically channeled directly from [D]ecedent to . . . [his grandchildren upon his death]." *See Estate of Bliven*, 236 N.W.2d at 371. Instead, Decedent's brokerage accounts passed to Taxpayer upon his death; then, one half of the accounts passed to Decedent's grandchildren solely upon the execution of the family settlement agreement.

In attempting to distinguish this case from *Estate of Bliven*, the Court of Appeals relies on two perceived differences that, in reality, do not distinguish the latter case from the instant case, or from *Estate of Van Duzer* for that matter. First, the Court of Appeals noted that "[b]oth this case and *Van Duzer* involved the estate attempting to

collect assets believed to be property of the estate." *See Gardiner Nance*, 2017 WL 4049523, at *3. Assuming that this is a fact of consequence, then this case is also akin to *Estate of Bliven*. Indeed, in that case, the estate was also protecting estate property by defending against the charities' claim that the decedent was incompetent to revoke her will. *See* 236 N.W.2d at 368.

The second parallel that the Court of Appeals draws between this case and *Estate of Van Duzer* is similarly unavailing. The Court of Appeals notes that the significant distinction between this case and *Estate of Van Duzer*, on the one hand, and *Estate of Bliven*, on the other, is that the grandchildren in this case and the surviving spouse in *Estate of Van Duzer* were "entitled to a distributive share of the [respective decedent's] estate." *See Gardiner Nance*, 2017 WL 4049523, at *3. The surviving spouse in *Estate of Van Duzer* was entitled to such share by reason of her election to take against the will. *See* 369 N.W.2d at 410. Here, the grandchildren were entitled to a distributive share of Decedent's estate because they were named in his will, but they became entitled to one half of his brokerage accounts solely by virtue of the family settlement agreement. *See*

Gardiner Nance, 2017 WL 4049523, at *4. Assuming, again, that this is a fact of consequence, this case is similar to *Estate of Bliven* as much as it is akin to *Estate of Van Duzer*. Indeed, the charities in *Estate of Bliven* also became entitled to a one-half share in the decedent's estate upon executing the settlement agreement, and they were in fact named in the decedent's will. *See* 236 N.W.2d at 368. Although the will had been torn up, the charities claimed that the decedent was incompetent to revoke her will. *See id.* As is the case here, the Bliven estate ultimately compromised the claim by agreeing to pay to the charities an amount equal to one half of the decedent's estate. *See id.*

The Court of Appeals erred in concluding that this case is controlled by *Estate of Van Duzer*. The perceived similarities identified by the Court of Appeals are immaterial to deciding the ultimate issue presented in this appeal. The Court of Appeals should have focused not on whether Decedent's grandchildren received the settlement proceeds through his estate, but on whether they had a right to those proceeds at the time of Decedent's passing separate and apart from the family settlement agreement. Because they had no

such right, the Court of Appeals erred in concluding that the settlement proceeds were exempt from inheritance tax under section 450.9.

B. Whether The Family Settlement Agreement Was Entered Into In Good Faith To Settle A Disputed Claim Is Irrelevant.

The Court of Appeals also erred in surmising that the beneficiary designation form was void due to Decedent's incompetence, a supposition based solely on the fact that "the parties . . . enter[ed] into an agreement requiring Beverly to forego one-half of the value of the brokerage accounts." *See Gardiner Nance*, 2017 WL 4049523, at *4. The Court of Appeals explained its rationale as follows:

> Clearly the principle that the property in a TOD account becomes the property of the designated beneficiary immediately upon death presumes a valid contract.
>
> . . .
>
> We agree the Department may not always be bound to family agreements and the Department has an obligation to collect inheritance taxes on schemes to avoid paying the taxes. But here, if the estate had presented overwhelming evidence that Lester D. Gardiner Sr. was incompetent, perhaps the Department would not have refused the refund. Moreover, instead of an issue of

> competency to contract, what if there was overwhelming evidence the contract was the product of dependent adult abuse by undue influence? Would the Department take the same position? Surely there can be no dispute that if the contract between the grantor and the administrator of the account is not valid, the property does not pass outside of the probate estate and belongs to the estate.

Id., at *5. The Court of Appeals analysis is flawed in that it presupposes the outcome of the competence dispute between Taxpayer and Decedent's grandchildren in the probate court—a claim that the parties settled—based entirely on the fact that Taxpayer agreed to pay one half of the brokerage accounts to settle the lawsuit. *See id.*, at *4 (suggesting that the grandchildren's claim of incompetence must have been meritorious or otherwise Taxpayer would have never agreed to forego one half of the balance in the brokerage accounts). Such reliance on the terms of the family settlement agreement as some indication of the strength of the underlying claim is even more puzzling in light of the Court of Appeals admission that "[o]ther factors exist that cause parties to reach a compromise beyond the likelihood of success at trial." *See id.*, at *5. Apparently, it is this misperceived strength of the grandchildren's claim that lead the Court of Appeals to incorrectly

conclude that the settlement proceeds paid to Decedent's grandchildren were exempt from inheritance tax as property passing directly from Decedent to his lineal descendants upon his death.

Additionally, analyzing the merits of the grandchildren's claim and relying on the perceived strength of such claim is inconsistent with *Estate of Van Duzer*, *Estate of Bliven*, *Seeley*, and *Wells' Estate*. In none of those cases did this Court engage in such analysis. The Court of Appeals decision, in effect, establishes a new framework or standard for deciding whether a family settlement agreement changes to whom property passes from the decedent. The Court of Appeals ruling holds that so long as a settlement agreement compromises a family claim involving the estate and is not entered into for tax evasion purposes, then such agreement must be honored for inheritance tax purposes. *See Gardiner Nance*, 2017 WL 4049523, at *4–5. The Court of Appeals decision is internally inconsistent in that its holding is identical to the "rule enunciated in federal courts," a rule which the Court of Appeals dismissed as "not helpful" at the outset of its analysis because of the differences between the federal estate tax and the Iowa inheritance tax. *See id.*, at *3 (explaining that

federal courts honor family settlement agreements for federal estate tax purposes, so long as the agreements are entered into in good faith, between adversarial parties, and not for postmortem tax planning purposes); *see also id.*, at *3 n.6. This new standard or framework set out by the Court of Appeals not only contradicts this Court's precedent but is totally unworkable in administering a fair and uniform application of Iowa inheritance tax laws.

Moreover, the court's speculation regarding the merits of the grandchildren's claim that Decedent was incompetent ignores the fact that the agency resolved that issue after both parties presented evidence, made arguments, and filed briefs. The Department concluded that Taxpayer failed to meet her burden of proof to establish that Decedent was incompetent. (App. 87–88; 92–93). Therefore, Taxpayer failed to demonstrate that the beneficiary form was void. (App. 92–93). The district court affirmed, (App. 105–07), and Taxpayer did not appeal that part of the district court's decision. *See Gardiner Nance*, 2017 WL 4049523, at *2 n.5. Thus, the agency conclusion that Taxpayer failed to meet her burden of proof on the issue of Decedent's competence is binding for purposes of this appeal.

Accordingly, the Department correctly concluded that the brokerage accounts passed to Taxpayer upon Decedent's death, and the Court of Appeals erred in finding that the "the Department's decision was irrational, illogical, or wholly unjustifiable." *See Gardiner Nance*, 2017 WL 4049523, at *5. Indeed, the Court of Appeals conclusion that the beneficiary designation form was void is purely speculative as it is based solely on the perceived strength of the grandchildren's claim, which was ultimately abandoned through the family settlement. *See id.*, at *4 ("[T]he estate's claim had sufficient merit to cause the parties to enter into an agreement requiring Beverly to forego one half of the value of the brokerage accounts."); *id.*, at *5 ("Clearly the principle that the property in a TOD account becomes the property of the designated beneficiary immediately upon death presumes a valid contract."). There is no evidence in the record to suggest such a speculative conclusion, and the Court of Appeals erred in concluding that Taxpayer has met her heavy burden of proving that the final agency decision was irrational, illogical, or wholly unjustifiable.

Lastly, the Court of Appeals decision holds that if a family settlement agreement was entered into for tax evasion purposes, then such agreement is not binding on the Department. *See Gardiner Nance*, 2017 WL 4049523, at *5 ("We agree the Department may not always be bound to family agreements and the Department has an obligation to collect inheritance taxes on schemes to avoid paying the taxes."). This conclusion would require that the Department be a part of every probate proceeding involving a will contest or a challenge to some legal document transferring title to nonprobate assets. In each case, the Department would be required to evaluate the merits of the underlying claim and decide whether the subsequent settlement compromising such claim was entered into with the purpose to avoid the lawful imposition of inheritance tax.

Even assuming that the Department had the resources to get involved in every probate proceeding, it remains unclear what qualifies as "schemes to avoid paying the [inheritance] taxes." *See Gardiner Nance*, 2017 WL 4049523, at *5. The record in this case, for instance, demonstrates that Taxpayer and Decedent's grandchildren specifically bargained for and agreed to divide "any

refund of the inheritance tax previously paid." (App. 70 ¶ 3). Apparently, the Court of Appeals did not interpret this provision of the family settlement agreement as a scheme to avoid paying the inheritance tax due, presumably because the Court of Appeals surmised that the agreement was entered into in good faith. As explained above, however, the Court of Appeals conclusion regarding the merits of the claim of Decedent's incompetence is speculative and ignores the favorable agency decision on that very issue, which was affirmed by the district court. (App. 105–07). As for the good faith settlement issue, the agency did not decide that question; thus, the Court of Appeals finding that "there is no evidence of a scheme to avoid taxes and, [that] by all indications, the settlement agreement was entered into by the parties in good faith" is, at best, misleading because neither party developed the record on this issue. *See Gardiner Nance*, 2017 WL 4049523, at *5.

Importantly, even if this case does not involve an unlawful tax avoidance scheme, the Court of Appeals decision "open[s] the door to infinite subtle schemes designed to evade the lawful imposition of inheritance taxes." *See Estate of Bliven*, 236 N.W.2d at 372. This

new standard requires that the Department undertake a case-by-case analysis of each settlement agreement, and shifts the burden of proof to the agency to show that the parties have engaged in a scheme to evade inheritance tax. Under existing precedent, the Department follows a bright-line test in that it calculates inheritance tax based on how the decedent's property passed at death, and disregards subsequent settlement agreements, regardless of whether they are entered into in good faith. *See* Iowa Admin. Code r. 701-86.14(2) (2009). If the family claim is not settled, the case proceeds to trial, and the will or other instrument is invalidated, then the Department implements the probate court's decision. The Court of Appeals opinion upends this long-standing precedent, and sets forth a new test, whereby the Department is required to calculate inheritance tax based on post-mortem settlement agreements, unless the agency is able to prove that the settlement was entered into for tax evasion purposes. This new framework for deciding when the Department must honor a settlement agreement for inheritance tax purposes is

untenable as it will strain agency and judicial resources and will challenge the uniform application of Iowa's inheritance tax laws.

CONCLUSION

For the foregoing reasons, the Department prays that the Court grant this Application for Further Review for purposes of reversing the Court of Appeals decision and reinstating the district court ruling, which concluded that the Department correctly denied Taxpayer's refund claim.

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REQUEST FOR ORAL ARGUMENT

The Department respectfully requests that it be heard in oral argument on its Application for Further Review.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(*g*)(1) or (2) because:
   - This brief contains 5,153 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*g*)(1)

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(*e*) and the type-style requirements of Iowa R. App. P. 6.903(1)(*f*) because:
   - This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Georgia font, size 14.

Signature

10/2/2017
Date

IN THE COURT OF APPEALS OF IOWA

No. 16-1974
Filed September 13, 2017

BEVERLY GARDINER NANCE,
Petitioner-Appellant,

vs.

IOWA DEPARTMENT OF REVENUE,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge.

Beverly Gardiner Nance appeals from an adverse judgment on judicial review of the department of revenue's denial of her request for a partial refund on an inheritance tax payment. **REVERSED AND REMANDED.**

David M. Repp and F. Richard Lyford of Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Donald D. Stanley Jr., Special Assistant Attorney General, and Hristo Chaprazov, Assistant Attorney General, for appellee.

Considered by Danilson, C.J., and Potterfield and Bower, JJ.

DANILSON, Chief Judge.

Beverly Gardiner Nance unsuccessfully sought judicial review from the Iowa Department of Revenue's (the Department) denial of her request for a partial refund of an inheritance tax payment. On appeal, she contends the distribution of a decedent's assets pursuant to a Family Settlement Agreement (FSA) should govern the imposition of inheritance taxes if the FSA was made in good faith and not for the purpose of avoiding taxes. Because we conclude the Department and the district court misapplied the law, we reverse and remand to the district court for remand to the Department for further proceedings consistent with this opinion.

I. Scope and Standard of Review.

Our review of this appeal from a judicial-review decision is governed by Iowa Code section 17A.19(10) (2016). *Brakke v. Iowa Dep't of Nat. Res.*, 897 N.W.2d 522, 530 (Iowa 2017). We, like the district court, function in an appellate capacity to correct any errors of law on the part of the agency. *See id.* If we reach the same conclusions as the district court, we affirm; otherwise, we reverse. *Iowa Ag Constr. Co. v. Iowa State Bd. of Tax Review*, 723 N.W.2d 167, 172 (Iowa 2006). Our review here is limited to deciding whether the Department's application of the relevant law to the facts of this contested case was irrational, illogical, or wholly unjustifiable. *See* Iowa Code § 17A.19(10)(m); *Iowa Ag. Constr.*, 723 N.W.2d at 174.

II. Background Facts.

In 2003, Lester Gardiner Sr. and Mildred Gardiner executed a transfer-on-death (TOD) agreement for their brokerage accounts. They named their son,

Lester Jr., as the beneficiary, and Lester Jr.'s wife, Beverly, as the contingent beneficiary.

Mildred died in 2004, Lester Jr. died in 2007, and Lester Sr. died in 2009. Lester Sr.'s three grandchildren (Beverly's stepchildren) were the beneficiaries and executors of Lester Sr.'s estate.

1. Estate versus Beverly.

In May 2009, the Estate of Lester Sr. (by the grandchildren) filed an action against Beverly to challenge the validity of the TOD agreement, claiming Lester Sr. had not been competent to execute it.[1] During the pendency of that action, the estate filed an inheritance tax return and remitted $18,988 to the Department based on the TOD designation for the assets of the brokerage accounts. This Dallas County lawsuit was resolved as a result of mediation which resulted in the execution of a FSA in July 2010, providing the assets of the brokerage accounts would be divided equally between the estate and Beverly.

2. Estate versus Department of Revenue.

a. Agency action. The estate filed an amended inheritance tax return with the Department and requested a $10,034 refund to reflect the revised distribution of the account assets. The estate reasoned the account assets that ultimately passed to the grandchildren by virtue of the FSA were exempt from the

[1] Iowa Code section 633D.11 (2017) (transferred from section 633.810 by the Code Editor for Code Supp. 2005) provides: "A transfer on death resulting from a registration in beneficiary form shall be effective by reason of the contract regarding the registration between the owner and the registering entity under the provisions of this chapter, and is not testamentary."

inheritance tax as property passing to lineal descendants.[2] The request was rejected.[3]

Beverly[4] then filed a protest. An administrative law judge (ALJ) held a hearing on the matter and denied the request for a refund. Relying on *In re Estate of Bliven*, 236 N.W.2d 366, 371 (Iowa 1975), the ALJ concluded the FSA "has no bearing on whether a taxable event occurred when the accounts passed to" Beverly. The ALJ ruled:

> The accounts are subject to inheritance tax unless one of the exemptions from Iowa Code chapter 450 applies. While property passing directly from the decedent to his grandchildren would be exempt from taxation, the accounts passed directly to [Beverly], and not his grandchildren. [Beverly] has not alleged one of the exemptions from Iowa Code chapter 450 applies in this case. The department properly denied [her] request for a refund.

(Footnotes omitted.)

Beverly appealed to the director of the Department. The director adopted the ALJ's findings and conclusions as "expanded and modified." The director rejected the argument that the issue was controlled by *In re Estate of Van Duzer*, 369 N.W.2d 407 (Iowa 1985), writing:

> *Van Duzer* hinged on the fact that the claimant in that case—decedent's surviving spouse—was entitled to a distributive share [from the decedent's estate] by reason of her election to take against the will. *See* 369 N.W.2d at 410. In the context of that

---

[2] "In computing the tax on the net estate, the entire amount of property, interest in property, and income passing to . . . lineal descendants . . . are exempt from tax." *See* Iowa Code § 450.9 (2009).

[3] The Department sent a letter to the estate dated November 3, 2010, stating in part: "The department of revenue does not accept family settlement agreements to change the calculation of the tax. Refer to the department's administrative rules [Iowa Administrative Code] rule 86.14(2)."

[4] The record is not clear how Beverly came to present the estate's protest. In her appellate brief to this court, Beverly indicates the estate has since closed and that it transferred to her any claim it might have to a refund. The State does not dispute this fact in its brief and so we accept this fact as undisputed.

> case, the Iowa Supreme Court viewed the settlement agreement as "a *tripartite* agreement whereby the trustee agreed to return $106,500 to the estate, and the executor agreed to pay an identical sum to the surviving spouse in satisfaction of her distributive share." *Id.* In other words, the decedent's surviving spouse did not receive the funds at issue from parties to the settlement agreement, but rather from the decedent by claiming against his will. *See id.*
>
> This Protest is factually distinct from *Van Duzer* and more akin to *Bliven*. The court in *Van Duzer* noted that *Bliven* was "clearly distinguishable" from *Van Duzer* because *Bliven* did not involve parties that could elect to make a claim for a distributive share against the estate. *Id.* . . .
>
> Like *Bliven*, in this case, [Beverly] and the decedent's beneficiaries [who] entered into the [FSA] could not elect to take a distributive share against the decedent's will. Under *Bliven*, in the case at hand, the portion of the TOD that [Beverly] agreed to give to decedent's beneficiaries under the [FSA] passed not from decedent's estate to the beneficiaries but from [Beverly] to the beneficiaries. Therefore, as the [ALJ] properly held, the fact that [Beverly] and decedent's beneficiaries entered into a [FSA] has no bearing on whether a taxable event occurred when the TOD passed to [Beverly].[5]

b. Judicial review sought in district court. Beverly sought judicial review in the district court. The district court noted Beverly did not challenge the Department's factual findings on judicial review. The court determined the Department was correct in concluding *Bliven* controlled the present case. It also found:

> As noted by both the ALJ and the director, the only proof [of Lester Sr.'s incompetency] offered by the petitioner was the opinions of Dr. Bender, someone who never examined or even observed Lester Sr. at any point in time prior to his death. The only basis for his opinions was the aforementioned status examinations, which again were not administered by Dr. Bender.
>
> As the trier of fact in this contested case proceeding, it was the director's prerogative to weigh the evidence and make the ultimate decision on whether it met the aforementioned burden; that conclusion was n[ot] irrational, illogical, or wholly unjustifiable.

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[5] In addition, the director concluded Beverly had failed to meet her burden of proof to establish "the decedent was incompetent when he executed the TOD." The Department's finding, or authority to determine competency, are not at issue on appeal.

III. Discussion.

On appeal, Beverly contends this court should follow a rule enunciated in federal courts—a FSA can control inheritance tax consequences when: (1) the underlying claim was based on enforceable legal rights of the claimant, (2) the parties to the agreement were truly adversarial, (3) the agreement was entered into in good faith as the result of arm's-length negotiations, and (4) no evidence exists suggesting the agreement was entered into for postmortem tax planning purposes. *See Estate of Hubert v. Comm'r*, 101 T.C. 314, 319-21 (1993), *aff'd*, 63 F.3d 1083 (11th Cir. 1995); *see also* Treas. Reg. § 20.2056(e)-2(d)(2); *Comm'r v. Estate of Bosch*, 387 U.S. 456, 467 (1967); *Estate of Brandon v. Comm'r*, 828 F.2d 493 (8th Cir. 1987). But federal law differs from Iowa law with respect to inheritance tax and, consequently, the federal authorities interpreting the federal law are not helpful.[6]

At first blush, the holding in *Bliven* appears to control. But upon a close review of the facts, it is apparent the facts in the instant case are much closer to the facts in *Van Duzer*. Thus, we are unable to agree with the district court and the law applied by the Department, and we conclude the decision reached by the Department was irrational, illogical, and wholly unjustifiable.

Both this case and *Van Duzer*, involved the estate attempting to collect assets believed to be property of the estate. In *Van Duzer*, the court stated,

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[6] *See, e.g., In re Will of Miller*, 438 N.W.2d 228, 231 (Iowa Ct. App. 1989) ("Iowa inheritance tax, unlike federal estate tax, is not a tax on the estate of the decedent but is a tax on each right of succession and is chargeable to the property each beneficiary receives.").

> We believe the cited cases are clearly distinguishable from the present case. The claimants in [*In re Estate of*] *Wells*, [120 N.W. 713 (Iowa 1909)], were persons not named in decedent's will or otherwise entitled to claim against the estate. The same is true of the charities which were the claimants in *Bliven.* In the present case, the claim was made by the person who was the decedent's surviving spouse and, as such, entitled to a distributive share by reason of her election to take against the will. Her claim was against the executor and the gravamen thereof concerned the amount of such statutory share. While based upon various theories, all aspects of her claim involved the alleged invalidity *ab initio* of the *inter vivos* trust, a circumstance which, if correct, would increase the share passing to the surviving spouse. To the extent the claims of the surviving spouse had merit, it was (a) the duty of the executor to seek return of assets in the possession of the trustees and administer them as estate assets, and (b) the obligation of the trustees to return those assets to the estate.

369 N.W.2d at 410.

Here, Beverly was not a person "named in decedent's will or otherwise entitled to claim against the estate." But Beverly was not the "claimant." Rather the estate on behalf of, and as agent for, the devisees was the claimant. The Department also contends, "The lynchpin of the *Estate of Van Duzer* holding is the fact that the claimant in that case—the decedent's surviving spouse was 'entitled to a distributive share [from the decedent's estate] by reason of her election to take against the will.'" But the significant fact in *Van Duzer* was not that the claimant was a surviving spouse entitled to take against the will but the fact that the surviving spouse was entitled to a distributive share of the estate. Clearly, the estate was representing the devisees in this action, and the devisees were entitled to distributive share of the estate similar to the surviving spouse in *Van Duzer*. *See* Iowa Code § 633.3(14) (defining a distributee as "a person entitled to any property of the decedent under the decedent's will or under the statutes of intestate succession").

Moreover, if the claim against Beverly had merit, the executor had a duty to seek the return of the assets and the share of the heirs would have increased. As it turned out, the estate's claim had sufficient merit to cause the parties to enter into an agreement requiring Beverly to forego one-half of the value of the brokerage accounts—thereby increasing the devisees' shares—much akin to how the surviving spouse's share was increased in *Van Duzer*.

Similar to the settlement agreement in *Van Duzer*, the settlement agreement here could be viewed as a tripartite agreement. *See* 369 N.W.2d at 410. The agreement provided that the funds in the Edward D. Jones accounts were to be liquidated to cash. Secondly, one-half of the funds in the accounts were to be distributed to the estate; and thirdly, the estate would then pay the sum it received to the devisees. This agreement and method of distribution was pursuant to a court order approving the family settlement filed September 3, 2010.

The new Iowa Code chapter 633D, pertaining to TOD accounts "do[es] not limit the rights of creditors or security owners against beneficiaries and other transferees under other laws of this state." Iowa Code § 633D.11(2). Further, the provisions of chapter 633D are supplemented by principles of law and equity. The fact that contract principles would apply was observed *In re Estate of Myers*, 825 N.W.2d 1, 6-7 (Iowa 2012),

> [Pay-on-death] POD accounts, such as the checking and certificate of deposit accounts here, and annuities are nonprobate assets. 1 Sheldon F. Kurtz, *Kurtz on Iowa Estates: Intestacy, Wills, and Estate Administration* § 11.1, at 451 (3d ed. 1995). Nonprobate assets are interests in property that pass outside of the decedent's probate estate to a designated beneficiary upon the decedent's death. *Id.* Although these assets are the personal

> property of the grantor *before* death, they become the personal property of the designated beneficiaries upon the grantor's death pursuant to a contract between the grantor and the administrator of the account. *See Karsenty v. Schoukroun*, 959 A.2d 1147, 1158 (2008) (holding that a TOD account was not part of the decedent's testate estate because the decedent's interest in the property did not survive his death, which is when the TOD account "transferred to [the beneficiary] . . . 'by reason of the contract' between him and [the administrator of the account]"); Restatement (Third) of Property: Wills and Other Donative Transfers § 1.1 cmt. b, illus. 12, at 10 (1999) ("Because [the grantor's] ownership interest in the account and in the securities expired on her death, no part of the balance in the account at her death or of the securities is included in [the grantor's] probate estate."); *see also* Iowa Code § 633D.11(1) (2009) ("A transfer on death resulting from a registration in beneficiary form shall be effective by reason of the contract regarding the registration between the owner and the registering entity under the provisions of this chapter, and is not testamentary.").

(Emphasis in original.) Clearly the principle that the property in a TOD account becomes the property of the designated beneficiary immediately upon death presumes a valid contract.

One of the basic principles of contract law is if a party to a contract does not have sufficient capability to understand the contract, the contract is void. *See Allen v. Berryhill*, 27 Iowa 534, 537 (1869). Further, "[a] higher degree of mental competence is required for the transaction of ordinary business and the making of contracts than is necessary for testamentary disposition of property." *In re Estate of Fair*, 159 N.W.2d 417, 420 (Iowa 1968).

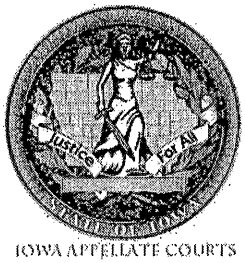
We agree the Department may not always be bound to family agreements and the Department has an obligation to collect inheritance taxes on schemes to avoid paying the taxes. But here, if the estate had presented overwhelming evidence that Lester D. Gardiner Sr. was incompetent, perhaps the Department would not have refused the refund. Moreover, instead of an issue of competency

to contract, what if there was overwhelming evidence the contract was the product of dependent adult abuse by undue influence? Would the Department take the same position? Surely there can be no dispute that if the contract between the grantor and the administrator of the account is not valid, the property does not pass outside of the probate estate and belongs to the estate.

Here, there is no evidence of a scheme to avoid taxes and, by all indications, the settlement agreement was entered into by the parties in good faith. We decline to weigh the judgment of Beverly in entering into the settlement agreement by attempting to weigh the evidence of incompetency. Other factors exist that cause parties to reach a compromise beyond the likelihood of success at trial.

We are unable to agree with the district court and conclude the Department's decision was irrational, illogical, and wholly unjustifiable. We reverse and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.



State of Iowa Courts

Case Number	**Case Title**
16-1974	Nance v. Department of Revenue

Electronically signed on 2017-09-13 09:26:25

IN THE IOWA DISTRICT COURT FOR DALLAS COUNTY

IN THE MATTER OF THE ESTATE OF MILDRED M. GARDINER, DECEASED	PROBATE NO. ESPR0 DECLINATION TO ACT AS EXECUTOR

2004 OCT 26 PM 2:36
CLERK, DISTRICT COURT

State of Iowa
} ss.
County of DALLAS

The undersigned, Lester D. Gardiner, states that the undersigned was nominated in the Last Will and Testament of Mildred M. Gardiner to act as Executor. The undersigned hereby declines to act as Executor of said estate and requests that Lester D. Gardiner Jr. be appointed to act as the Executor herein.

Lester D. Gardiner
Lester D. Gardiner

Subscribed and sworn to before me this October 21, 2004.

Notary Public in and for
said State

JOHN C. POWELL
COMMISSION NO. 101446
MY COMMISSION EXPIRES
1-12-06

IN THE IOWA DISTRICT COURT FOR DALLAS COUNTY

IN THE MATTER OF THE ESTATE	:	PROBATE NO. ESPR021109
OF	:	ELECTION OF SURVIVING SPOUSE IN RELATION TO WILL
MILDRED M. GARDINER , DECEASED	:	

FILED
DALLAS COUNTY, IOWA
05 MAY 12 AM 11:56
GLORIA L. WARD
CLERK, DISTRICT COURT

State of Iowa)
) ss.
County of Dallas)

The undersigned being first duly sworn on oath states as follows:

The undersigned, surviving Husband of the above-named Decedent, voluntarily elects to take under the provisions of the will of said Decedent heretofore admitted to probate in this cause, and directs that this election be entered on the proper records of the Court.

Lester D. Gardiner

Lester D. Gardiner

Subscribed and sworn to before me this May 11, 2005.

JOHN C. POWELL
COMMISSION NO. 101446
MY COMMISSION EXPIRES
1-12-06

Notary Public in and for
said State

Filings
Title: LESTER D GARDINER SR GUARDIANSHIP & CONSERVATORSHIP
Case: 05251GCPR021644 (DALLAS)
Citation Number:

Event	Filed By	Filed	Create Date	Last Updated	Action Date
ORDER CLOSING PROBATE	HUSCHER PAUL R	06/15/2009	06/15/2009	06/15/2009	
OTHER EVENT		06/15/2009	06/15/2009	06/15/2009	
Comments: RECEIPT OF DISTRIBUTION OF ASSETS FROM CONSERVATORSHIP AND WAIVER OF NOTICE OF HEARING					
AFF OF COMPENSATION	POWELL JOHN CLARENCE	06/15/2009	06/15/2009	06/15/2009	
OTHER APPLICATION	POWELL JOHN CLARENCE	06/15/2009	06/15/2009	06/15/2009	
Comments: APPLICATION FOR ALLOWANCE OF FEES					
FINAL REPORT		06/15/2009	06/15/2009	06/15/2009	
Comments: CONSERVATORSHIP					
FINAL REPORT		06/15/2009	06/15/2009	06/15/2009	
Comments: GUARDIANSHIP					
OTHER APPLICATION	POWELL JOHN CLARENCE	05/26/2009	05/26/2009	05/26/2009	
Comments: APPLICATION FOR EXTENSION TO FILE FINAL REPORT					
ORDER FOR 30 DAY PROBATE EXTENSION	HULSE GREGORY A	05/26/2009	05/26/2009	05/26/2009	
Comments: ORDER GRANTING EXTENSION TO FILE FINAL REPORTS TO BE FILED BY 6/26/09					
AFF OF COMPENSATION		12/23/2008	12/23/2008	12/23/2008	
OTHER APPLICATION	POWELL JOHN CLARENCE	12/23/2008	12/23/2008	12/23/2008	
Comments: APPLICATION FOR ALLOWANCE OF FEES					

ANNUAL REPORT		12/23/2008	12/23/2008	12/23/2008
Comments: CONSERVATORSHIP				
ANNUAL REPORT	GARDINER BEVERLY A	12/23/2008	12/23/2008	12/23/2008
Comments: GUARDIANSHIP				
ORDER APPOINTING	JOY WILLIAM H	12/23/2008	12/23/2008	12/23/2008
Comments: APPROVING ANNUAL REPORTS AND ALLOWING FEES				
OTHER APPLICATION	POWELL JOHN CLARENCE	11/21/2008	11/21/2008	11/21/2008
Comments: APPLICATION FOR EXTENSION TO FILE ANNUAL REPORTS				
ORDER FOR 30 DAY PROBATE EXTENSION	HUSCHER PAUL R	11/21/2008	11/21/2008	11/21/2008
Comments: CO-GUARDIAN & CO-CONSERVATORS ARE GRANTED UNTIL 12/30/08 TO FILE ANNUAL REPORTS				
ORDER APPROVING REPORT	GOODHUE DARRELL J	11/27/2007	11/27/2007	11/27/2007
Comments: ORDER APPROVING INITIAL REPORTS AND ALLOWING FEES				
AFF OF COMPENSATION	POWELL JOHN CLARENCE	11/27/2007	11/27/2007	11/27/2007
OTHER APPLICATION	POWELL JOHN CLARENCE	11/27/2007	11/27/2007	11/27/2007
Comments: APPLICAITON FOR ALLOWANCE OF FEES				
INVENTORY REPORT		11/27/2007	11/27/2007	11/27/2007
INITIAL REPORT		11/27/2007	11/27/2007	11/27/2007
Comments: GUARDIANSHIP				
SURETY BOND POSTED		09/13/2007	09/13/2007	09/13/2007
Comments: ORIGINAL SURETY BOND-($46,000.00) MERCHANTS BONDING COMPANY				
SURETY BOND		09/11/2007	09/11/2007	09/11/2007

POSTED

Comments: FAX COPY-MERCHANGS BONDING COMPANY ($46,000.00)

LETTERS OF APPOINTMENT		09/11/2007	09/11/2007	09/11/2007

Comments: BEVERLY A GARDINER AND DIANNE LYNAE GREEN CO-GUARDIANS AND

CO-CONSERVATORS

ORDER APPOINTING	GOODHUE DARRELL J	09/11/2007	09/11/2007	09/11/2007

Comments: ORDER FOR APPOINTMENT OF CO-GUARDIANS AND CO-CONSERVATORS

ANSWER	DALEN DUWAYNE JOHN	09/11/2007	09/11/2007	09/11/2007

Comments: ANSWER AND REPORT OF GUARDIAN AD LITEM

RETURN OF ORIGINAL NOTICE		08/13/2007	08/13/2007	08/13/2007

Comments: CINDY FRIESS, ADMINISTRATOR, ROWLEY MEMORIAL MASONIC HOME

RETURN OF ORIGINAL NOTICE		08/13/2007	08/13/2007	08/13/2007

Comments: ACCEPTANCE OF SERVICE-DUWAYNE J DALEN, GAL

OTHER AFFIDAVIT		08/08/2007	08/08/2007	08/08/2007

Comments: AFFIDAVIT OF MAILING

ORDER SETTING HEARING	HUSCHER PAUL R	08/06/2007	08/06/2007	08/06/2007

Comments: 09/11/07 AT 1:30 P.M.-APPT OF GUARDIAN & CONSERVATOR

DNU-CONFIDENTIAL INFORMATION FORMS		08/03/2007	08/03/2007	08/03/2007
DESIGNATION OF ATTORNEY		08/03/2007	08/03/2007	08/03/2007

Comments: JOHN C POWELL, ATTY

OATH		08/03/2007	08/03/2007	08/03/2007

Comments: COURT OFFICER'S OATH

OATH	08/03/2007	08/03/2007	08/03/2007

Comments: COURT OFFICER'S OATH

OTHER APPLICATION	08/03/2007	08/03/2007	08/03/2007

Comments: APPLICATION FOR ORDER FIXING TIME AND PLACE OF HEARING, PRESCRIBING NOTICE, AND APPOINT GUARDIAN AD LITEM

PETITION FILED	08/03/2007	08/03/2007	08/03/2007

Comments: PETITION FOR APPOINTMENT OF GUARDIAN AND CONSERVATOR (INVOL)

CN=John Q Public,O=JUDICIAL

THE IOWA STATE BAR ASSOCIATION Official Form No. P-240	John C. Powell	FOR THE LEGAL EFFECT OF THE USE OF THIS FORM, CONSULT YOUR LAWYER

THE IOWA DISTRICT COURT

DALLAS COUNTY

IN THE MATTER OF THE GUARDIANSHIP AND CONSERVATORSHIP OF

LESTER D. GARDINER, SR.

Probate No. GCPR021644

PETITION FOR APPOINTMENT OF GUARDIAN AND CONSERVATOR (INVOLUNTARY)

The undersigned states:

1. The above-named person has the following post office address:
3000 Willis Avenue, Perry, Iowa 50220
and is 95 years of age.

2. Such person (check one):

___ is a minor. The circumstances of this case (do) (do not) require that the proposed ward be represented by an attorney. An affidavit explaining these circumstances is attached to this petition as Exhibit A.

_X_ is a person whose decision-making capacity is so impaired that the person is unable to care for the person's personal safety or to attend to or provide for necessities for the person such as food, shelter, clothing, or medical care, without which physical injury or illness may occur and whose decision-making capacity is so impaired that the person is unable to make, communicate, or carry out important decisions concerning the person's financial affairs.

3. The name of the proposed Guardian and Conservator, who is qualified to serve in both capacities, is Beverly A. Gardiner and Dianne Lynne Green, whose post office address is 1533 - 4th Avenue SE, Altoona, Iowa 50009 and 5321 Brookview Drive, West Des Moines, Iowa 50266.

4. The proposed ward is a resident of the State of Iowa, or is present in the State of Iowa.

5. The proposed ward is presently in the care, custody or control of himself who has the following post office address:
3000 Willis Avenue, Perry, Iowa 50220.

6. A limited conservatorship (is) (is not) appropriate pursuant to Iowa Code § 633.635.

7. A limited guardianship (is) (is not) appropriate pursuant to Iowa Code § 633.635.

8. (Optional) Attached to this form is a verified statement from a physician licensed to practice in the State of Iowa regarding the proposed ward's condition.

9. (Optional) ~~Third-party assistance (is) (is not)~~ available.

10. The proposed ward has property of the estimated values as follows: real property $ 450,000.00 , personal property $ 279,000.00 . The estimated gross annual income of the proposed ward is $ 25,000.00 . Money is not payable, or to become payable, to the proposed ward by the United States through the Veterans Administration.

11. The proposed ward is not indigent within the meaning of Iowa Code Sections 633.561(3) and 633.575(3) and proof of the proposed ward's income and resources (is) (is not) attached to this petition.

12. The proposed ward is hereby notified as follows:

NOTICE OF RIGHTS OF PROPOSED WARD

YOU ARE HEREBY NOTIFIED THAT, IN A PROCEEDING FOR THE APPOINTMENT OF A GUARDIAN AND CONSERVATOR FOR YOU AS AN ADULT, ARE ENTITLED TO REPRESENTATION. IF YOU ARE INDIGENT OR INCAPABLE OF REQUESTING COUNSEL, THE COURT SHALL APPOINT AN ATTORNEY TO REPRESENT YOU AND, IF YOU ARE INDIGENT, THE APPOINTMENT OF SUCH COUNSEL SHALL BE AT THE COUNTY'S EXPENSE. IF YOU ARE A MINOR, THE COURT SHALL DETERMINE WHETHER, UNDER THE CIRCUMSTANCES OF THE CASE, YOU ARE ENTITLED TO REPRESENTATION. THE DETERMINATION REGARDING REPRESENTATION SHALL BE MADE ONLY AFTER SUCH NOTICE TO YOU IS MADE AS THE COURT DEEMS NECESSARY. YOU HAVE A RIGHT TO COUNSEL IF YOU SO CHOOSE, YOU MAY USE YOUR OWN ATTORNEY INSTEAD OF AN ATTORNEY APPOINTED BY THE COURT, AND YOU HAVE A RIGHT TO BE PERSONALLY PRESENT AT ALL PROCEEDINGS. THE APPOINTMENT OF A GUARDIAN AND CONSERVATOR, OR EITHER, FOR YOU INVOLVES A POTENTIAL DEPRIVATION OF YOUR CIVIL RIGHTS.

13. The proposed ward is hereby further notified as follows:

NOTICE OF GUARDIANSHIP AND CONSERVATORSHIP POWERS

YOU ARE NOTIFIED THAT IF A GUARDIAN IS APPOINTED FOR YOU, THE GUARDIAN MAY, WITHOUT COURT APPROVAL, PROVIDE FOR YOUR CARE, MANAGE YOUR PERSONAL PROPERTY AND EFFECTS, ASSIST YOU IN DEVELOPING SELF-RELIANCE AND RECEIVING PROFESSIONAL CARE, COUNSELING, TREATMENT, OR SERVICES AS NEEDED, AND ENSURE THAT YOU RECEIVE NECESSARY EMERGENCY MEDICAL SERVICES. YOU ARE ALSO ADVISED THAT, UPON THE COURT'S APPROVAL, THE GUARDIAN MAY CHANGE YOUR PERMANENT RESIDENCE TO A MORE RESTRICTIVE RESIDENCE, AND ARRANGE FOR MAJOR ELECTIVE SURGERY OR OTHER NON-EMERGENCY MAJOR MEDICAL PROCEDURE.

YOU ARE NOTIFIED THAT IF A CONSERVATOR IS APPOINTED FOR YOU, THE CONSERVATOR MAY, WITHOUT COURT APPROVAL, MANAGE YOUR PRINCIPAL, INCOME, AND INVESTMENTS, SUE AND DEFEND ANY CLAIM BY OR AGAINST YOU, SELL AND TRANSFER PERSONAL PROPERTY, AND VOTE AT CORPORATE MEETINGS. YOU ARE FURTHER NOTIFIED THAT, UPON THE COURT'S APPROVAL, THE CONSERVATOR MAY INVEST YOUR FUNDS, EXECUTE LEASES, MAKE PAYMENTS TO OR FOR YOUR BENEFIT, SUPPORT YOUR LEGAL DEPENDENTS, COMPROMISE OR SETTLE ANY CLAIM, AND DO ANY OTHER THING THAT THE COURT DETERMINES IS IN YOUR BEST INTERESTS.

14. I have read the foregoing petition and verily believe that the statements contained therein are true.

WHEREFORE, the undersigned prays the Court to appoint such proposed person as the Guardian of the person and Conservator of the property of the proposed ward.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the preceding is true and correct.

6-27-07
Date

Dianne Lynae Ween
Dianne Lynae Ween, Petitioner
5321 Brookview Drive
West Des Moines, IA 50266

Beverly A. Gardiner
Signature

Beverly A. Gardiner
Petitioner's Name

1533 - 4th Avenue SE
Altoona, IA 50009
Address

UNIVERSITY of IOWA HEALTH CARE

UI Family Care – Perry

616 Tenth Street
Perry, IA 50220
515-465-3553 Tel
515-465-4319 Fax

July 30, 2007

To Whom It May Concern:

RE: Lester Gardner, Sr.

Mr. Gardner is a patient that I follow at the Rowley Memorial Masonic Home. Mr. Gardner has a long history of vascular dementia. Mr. Gardner is unable to care for his own daily needs. His mental condition makes him incapable of caring for his own personal safety or provide for the necessities of life such as food, shelter, clothing and continuing medical care.

Sincerely,

K.J. Klise, M.D.

KJK/lp